

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN FERDMAN,

Plaintiff,

- against -

CBS INTERACTIVE INC.

Defendant.

Docket No. 17-cv-1317 (PGG)

ECF CASE

NOTICE OF MOTION

PLEASE TAKE NOTICE that pursuant to S.D.N.Y. Local Rule 6.3 and Rule 60(b)(1) of the Federal Rules of Civil Procedure, Plaintiff Steven Ferdman (“Plaintiff”) will hereby move this Court, on a date and at such time as may be designated by the Court, for an Order granting reconsideration or reargument of the Court’s Order, dated and entered September 24, 2018 [Docket # 48], which granted summary judgment in Defendant’s favor on the issue of willfulness or, in the alternative, to vacate that portion of the Court’s order on willfulness pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure.

This motion is made on grounds, *inter alia*, that the U.S. Supreme Court’s holding in *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 353, 118 S. Ct. 1279, 1287, 140 L. Ed. 2d 438 (1998) forecloses a district court’s granting of summary judgment on the issue of willfulness. This is because “the Seventh Amendment provides a right to a jury trial on all issues pertinent to an award of statutory damages under § 504(c) of the Copyright Act, including the amount itself.” *Feltner*, 523 U.S. at 353 (underline added). Given that the issue of willfulness

directly (and exclusively) relates to the calculation of statutory damages under 17 U.S.C. § 504(c), the Court is bound by the Seventh Amendment to reserve the question for the jury.

In support of this motion, Plaintiff submits this Notice of Motion and an accompanying memorandum of law. Defendant's opposition brief, if any, is due on or before October 15, 2018.

Valley Stream, NY
Dated: October 1, 2018

Respectfully Submitted,

/richardliebowitz/
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